

Nathaniel Masih Vs. U.P. Scheduled Caste Finance and Development Corpn. Ltd. and ors.

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Court : Allahabad

Decided On : May-16-1989

Reported in : [1989(59)FLR620]; (1991)IILLJ347All

Judge : U.C. Srivastava and ;S.H.A. Raza, JJ.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2, 10 and 25F; [Constitution of India](#) - Article 226

Appeal No. : W.P. No. 6002/1983

Appellant : Nathaniel Masih

Respondent : U.P. Scheduled Caste Finance and Development Corpn. Ltd. and ors.

Advocate for Def. : S.C. Misra, ;Ashok Srivastava and ;K.S. Pathak, Advs.

Advocate for Pet/Ap. : A. Mannan, Adv.

Disposition : Petition allowed

Judgement :

U.C. Srivastava, J.

1. The order of termination of services of the petitioner from the post of driver passed by the Managing Director of the U.P. Scheduled Caste Finance and Development Corporation Limited (hereinafter referred to as the Corporation) is subject-matter of challenge in this writ petition.

2. The petitioner was initially appointed as driver in the Corporation and was drawing salary of less than Rs. 500 per month. His services were terminated by giving him one month's salary. The petitioner has challenged the said order on the ground that he is workman and the opposite party No, 1 being industry the provisions of Sections 25-F, 25-N and 25-G of the Industrial Disputes Act (which are analogous to Section 6 of the U.P. Industrial Disputes Act) are attracted and as the petitioner has completed more than 240 days of continuous service and juniors to him have been retained, his termination amounts to retrenchment without following the provisions of Industrial Disputes Act.

3. On behalf of the Corporation a counter-affidavit has been filed and it has been pleaded that the petitioner has no right to file a writ petition after a period of one year and alternative remedy is available. It has been disputed by the opposite parties that the Corporation is an industry and consequently the petitioner is workman. It has been admitted that the Corporation is a Statutory Corporation and is 'State' within the meaning of Article 12 of the Constitution. It has been stated that the main object of the Corporation is to promote and assist, organise, finance and develop the task of socio-economic and educational uplift of the Scheduled Caste in the State of Uttar Pradesh.

4. So far as the question of delay is concerned, the termination order was passed on March 17, 1982 and the writ petition was preferred by the petitioner on November 14, 1983. It appears that the writ petition was admitted. It seems that the Bench condoned the delay and that is why the writ petition was admitted and delay and laches have been explained by the petitioner. In the rejoinder affidavit it has been averred by the petitioner that the writ petition having already been admitted, the question of delay and laches does not arise. It has further been stated that the petitioner is a very poor person and could not manage for the expenses required for the filing of the writ petition. Obviously, the petitioner being

out of service if he filed the writ petition at a belated stage, it cannot be said that the petition is to be thrown out on the ground of delay and laches in view of the circumstances mentioned by the petitioner.

5. So far as question of alternative remedy is concerned, there is no hard and fast rule, but in case the termination order is violative of principles of natural justice and has been passed without complying with the mandatory provisions of the Industrial Disputes Act, pleas which have been raised by the petitioner, obviously, alternative remedy, will not stand in the way and the matter can be adjudicated upon instead of asking a party to avail alternative remedy. Once a writ petition has been admitted, it will not be proper exercise of jurisdiction to dismiss the same on the ground of alternative remedy and that too when only a very short question is involved in the writ petition.

6. The next question which arises for determination is whether the U.P. Scheduled Caste Finance and Development Corporation Ltd is an industry or not. On behalf of the opposite parties reliance has been made on the case reported in Bangalore Water Supply and Sewerage Board v. Rajappa (1978-I-LLJ-349). In the said case it has been observed that the industry cannot be strictly defined but only can be described. It has been observed(p. 404):

'Where there is: (i) systematic activity, (ii) organised by co- operation, between employer and employee (the direct and substan-list element is chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious, but inclusive of material things or services geared to celestial bliss), prima facie there is an industry in the enterprise.'

In the said case even various activities of the Municipal Boards, Clubs, Hospitals, Charitable Institutions etc. were held to be industry.

In the Management of Safdarjung Hospital, New Delhi v. K.S. Sethi and Ors. (1970-II-LLJ-266), the question involved was whether hospital is industry within the meaning of Industrial Disputes Act.

In *Gopalji Jha Shastri & Ors. v. State of Bihar* (1983-II-LLJ-22), taking into consideration decision of the Constitution Bench in *Bangalore Water Supply and Sewerage Board v. Rajappa* (supra), it was held that the Bihar Khadi Gramodyog Sangh is an industry within the meaning of the expression of Section 2(j) of the [Industrial Disputes Act, 1947](#).

In *Des Raj & Ors. v. State of Punjab & Ors.* (1988-II-LLJ-149) it was held that the Irrigation Department of the State of Punjab was industry within the meaning of Section 2(j) of the Industrial Disputes Act.

7. A driver doing mechanical work and getting less than Rs. 500 is a 'workman'. The Corporation is to organise and work in various ways for upliftment of down-trodden, help them financially for various purposes including starting industries and organising and helping them in getting technical training etc. The activities which are systematic and cannot be carried on without the co-operation, of employees of the Corporation and causes production and distribution of goods and services is an 'industry' within the meaning of Industrial Disputes Act.

8. On behalf of the petitioner reference was] made to an unreported decision of Hon'ble Supreme Court in *K.K. v. U.P. State Food and Essential Commodities Corporation & Ors.* (Civil Appeal No. 4077 of 1988, decided on 5 November 17, 1988) in which without considering the question that the Corporation was 'industry', may it be either, it was conceded or was accepted, it was held that the U.P. State Food and Essential Commodities Corporation 1 which supplies food and essential commodities, is an 'industry' and the termination of services of employees who have completed 240 days without complying with the provisions of the Industrial Disputes Act was held to be bad.

9. In the present case, the Corporation comes within the definition of an 'industry' and consequently termination of the services of the petitioner without complying with Section 25-F of the Industrial Disputes Act, which provides for giving notice and compensation before retrenchment of services, is bad in the eye of law and in breach of the provisions of the Industrial Disputes Act. It is also bad in view of the fact that juniors to the petitioner have been retained in service and a senior has been axed out and that too without assigning any reason whatsoever.

10. Consequently the writ petition deserves to be allowed and is hereby allowed and the impugned order of termination dated March 17, 1981, contained in Annexure No. I to the writ petition is hereby quashed. The consequences are to follow. There will be no order as to costs. Petition allowed.

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